

# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 41

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SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

NATIONAL SECURITIES, INC., ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

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## REPLY BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

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1. The respondent accuses the Commission of a "serious injustice" in presenting this case "as if \* \* \* [the lower] courts had held that the [McCarran-Ferguson] Act \* \* \* immunize[d] transactions in securities of insurance companies from the application of federal securities laws" (Br. p. 12). But this is certainly a reasonable conclusion from the rationale of the court of appeals, reflected by its statement, referred to in our brief (p. 8), that in adopting the McCarran Act "Congress was apparently seeking to define an exemption for insurance continuous with its power to regulate interstate commerce"

(App. 156), as well as by its statement that a "vital" purpose of that Act was "to preserve intact from any federal intrusion based on the commerce clause, existing and future State regulation of the insurance industry" (App. 157). The court of appeals did not base its decision on the alternative ground urged by the companies that "no sale" of securities took place in connection with the merger, or on the propriety of the relief requested. Accordingly, as we read the opinion, the court of appeals held that no provision of the federal securities laws is applicable to securities of insurance companies with respect to any matters as to which the States have exercised jurisdiction over those companies.

2. National Securities devotes a major portion of its brief (pp. 13-23) to the proposition that the merger did not involve any "sale" of securities. The court of appeals, however, stated that it was discussing "only one of the issues of law" involved—the application of the McCarran Act (App. 154). It noted "that the district court did not reach the question whether the consolidation of Producers Life and National Life into National Producers involved purchases or sales of securities in connection with which the alleged fraud occurred" (*ibid.*). Thus the question is not appropriately before this Court for decision (see footnotes 6 and 31 of our brief).

13. National Securities states (Br. pp. 30-31) that "the fundamental question of this case" is whether "the SEC and the federal courts, or the state insurance department and the state courts" "have juris-

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diction to decide" whether insurance "companies may merge." This is unfounded. The Commission asserts no jurisdiction over mergers of insurance companies. It contends only that the federal courts may, at the suit of the Commission, enjoin or otherwise remedy fraudulent activities in the purchase or sale of insurance company securities, whether or not these occur in connection with a merger of insurance companies.

The Commission does not seek in any way to regulate or control "the business of insurance." It seeks only to protect investors against fraud in dealings in securities, whatever may be the business of the company whose securities are involved.

Respectfully submitted.

ERWIN N. GRISWOLD,  
*Solicitor General.*

PHILIP A. LOOMIS, Jr.,  
*General Counsel,*  
*Securities and Exchange Commission.*

NOVEMBER 1968.